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OCT 28 2004

OFFICE OF PETITIONS

In re Application of :
Carrascal, et al. : DECISION REFUSING STATUS
Application No. 10/791,920 : UNDER 37 CFR 1.47(a)
Filed: March 2, 2004 :
Atty. Dkt. No.: 101216-39 :
For: COMPOSITION FOR DYEING HUMAN :
HAIR :
:

This decision is in response to the renewed petition under 37 CFR 1.47(a), filed September 21, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed March 2, 2004 without an executed oath or declaration. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed May 21, 2004 requiring an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (1) set forth above.

Petitioners have failed to establish that joint inventor Isabel Carrascal refuses to sign the declaration after having been presented with the application papers. The petition executed by

Theodore Gottlieb and the statements of Mustafa Grit reference a refusal however neither Gottlieb nor Grit profess to have first hand knowledge of the alleged refusal.

Petitioners' attention is directed to MPEP 409.03(d) wherein it states "[w]here a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made.

Statements by a party not present when an oral refusal is made will not be accepted." (Emphasis added.)

Any renewed petition must be accompanied by evidence that sufficiently establishes that the inventor received the application papers and thereafter refused to execute the declaration. A statement of facts from the person(s) to whom the refusal was made should accompany any renewed petition. The statement of facts should detail the manner, time, and place that the application papers were presented to the inventor and where an express oral refusal to sign the declaration is alleged, that fact along with the time and place of the refusal must be stated in the statement of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 308-6916

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petition
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3205.


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